Internal Revenue Service

memorandum

TR-45-1098-94
CC:EBEO:Br4--REWeinheimer

date: JUL 5 1995

to: Director, Exempt Organizations Technical Division E:EO
Attn: Bob Fontenrose

from: Chief, Branch 4 (Employee Benefits and Exempt Organizations)
CC:EBEO:Br4

subject: [redacted]

This responds to your memorandum of May 31, 1994, requesting our consideration of an application for recognition of exemption under section 501(c)(9) of the Internal Revenue Code by the [redacted] (the Fund).

The Fund is a trust formed by a cooperative of tax-exempt hospitals, its member hospitals, and certain non-member tax-exempt affiliates of the member hospitals. The Fund is designed to provide workers' compensation benefits required under the laws [redacted]. The Fund intends to pay benefits at a level that is [redacted]% above the level mandated by the [redacted] statutes.

In Rev. Rul. 74-18, 1974-1 C.B. 139, the Service ruled that an association formed to pay workers' compensation benefits required under state law does not qualify for exemption under section 501(c)(9) of the Code. The Service reasoned that the association did not provide to the employees any benefits other than those to which they were already entitled under state law. Instead, the association merely ensured that the employer would discharge its statutory obligation to the employees.

In [redacted] G.C.M. 38922, EE-73-81 (August 20, 1982), it was concluded that a trust formed through collective bargaining to provide workers' compensation benefits required under state law was exempt under section 501(c)(9) of the Code. This conclusion was based in essence on the following analysis. Workers' compensation benefits are generally a type of benefit that may be provided by a voluntary employees' beneficiary organization described in section 501(c)(9) of the Code (VEBA). However, a trust formed unilaterally by an employer to discharge its obligations under the workers' compensation laws of a state is formed for the benefit of the employer and cannot be exempt under section 501(c)(9). By contrast, where such a trust is formed through collective bargaining, the Service should defer to the judgment of the employees and conclude that the trust is formed for the benefit of the employees and thus can be a VEBA. The rationale for the distinction between trusts formed unilaterally by

employers and those formed through collective bargaining lies in the wider latitude granted throughout the regulations under section 501(c)(9) for trusts formed through collective bargaining. Although the trust in [redacted], G.C.M. 38922, was intended to supplement the basic statutory benefits if possible, that fact was not relied on in distinguishing the trust from the association in Rev. Rul. 74-18.

The Fund in this case was formed not through collective bargaining but unilaterally by a group of employers to satisfy their obligations to provide workers' compensation benefits required under the laws of [redacted] We conclude that the Fund does not satisfy the requirements for exemption under section 501(c)(9) of the Code. The provision of benefits at a level [redacted]% above that required by the [redacted] statutes does not change our conclusion. For workers' compensation benefits required by state law to be a permissible benefit in a VEBA not formed through collective bargaining, they would have to constitute a de minimis amount of the total benefits provided by the trust. See Treas. Reg. § 1.501(c)(9)-3(a) (an organization is not a VEBA if it systematically and knowingly provides impermissible benefits of more than a de minimis amount) and [redacted] G.C.M. 39817, EE-120-81 (November 24, 1982) (payment of a de minimis amount of workers' compensation benefits does not warrant denial of exemption under section 501(c)(9)). In this case the workers' compensation benefits mandated by the statute constitute more than [redacted]% of the benefits to be provided by the Fund. This percentage is more than de minimis. Consequently, the Fund does not satisfy the requirements of section 501(c)(9).

MARK SCHWIMMER

Attachment:
Administrative file